

10. (Reiterated) A plant, plant cell or other plant part comprising the DNA sequence of Claim 3.

11. (Reiterated) A plant, plant cell or other plant part produced by the method of any one of Claims 4, 5 and 9.

REMARKS

Claims 3 - 5 and 9 - 11 are pending in the application. Claim 3 has been amended. No new matter has been added.

The specification has been amended as suggested by the Examiner in regards to Figure 8. Formal drawings with these changes will be made at such time as the claims are allowed. The sequence listing has been amended to include the sequence set forth in claim 3. A paper and computer readable form of the amended sequence listing is enclosed herewith. The content of the paper and computer readable forms are the same (§ 1.821(f)). This submission does not include new matter (§ 1.821(g)).

Moreover, the Applicant reserves the right to prosecute, in one or more patent applications, the canceled claims, the claims to non-elected inventions, the claims as originally filed, and any other claims supported by the specification. Any amendments made to the claims herein were made solely to expedite and facilitate prosecution and were not made nor should they be construed to have been made to overcome any issue of unpatentability of the claims prior to amendment or in acquiescence of the Examiner's rejections to the claims.

Rejection under 35 U.S.C. § 112, second paragraph

Claim 3 and pages 6, 17 and 21 have been amended to include sequence identifier information. In addition, claim 3 has been amended to clarify claims 4 and 9. Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 112, second paragraph be withdrawn.

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Double Patenting Rejection

Claims 3 - 5 and 9 - 11 were rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1 - 18 of U.S. Patent No. 6,015,939. Enclosed herewith is a terminal disclaimer under 37 CFR 1.321(c).

In light of the above arguments and amendments, it is submitted that all of the pending claims are in condition for full and complete allowance and therefore, such action is respectfully requested.

If there are any issues or amendments the Examiner wishes to discuss, the Examiner is encouraged to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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